

## **REMARKS**

This Amendment is in response to the final Office Action mailed October 4, 2005 (hereinafter, "the Office Action"). Claims 1-6, 8-13, and 15-20 remain pending.

All references to the claims, except as noted, will be made with reference to the claim list provided above starting on page 2. Cited line numbers will count every printed line, except the page header, but including section headings, unless line numbering is provided in the cited document, e.g., published patents. If there is any confusion or questions regarding any aspect of this Amendment, the Examiner is invited to contact the undersigned.

### ***Status***

Applicant notes with appreciation that all previous rejections and objections have been withdrawn in response to the Amendment filed August 15, 2005. Pending claims 1-6, 8-13, and 15-20 stand rejected under one or more of a nonstatutory basis, 35 U.S.C. §§ 102(b), and 103(a) based on newly cited art.

### ***Amendment***

Claim 8 is amended to change "active computing environment" to "operating system." This change is supported by the specification, e.g., at the first to paragraphs inserted into page 16 of the specification by the Amendment filed August 15, 2005, this text being previously incorporated by reference. No new matter is entered by this Amendment.

### ***Rejections -- Nonstatutory Double Patenting***

Claims 1-6, 8-13, and 15-20 stand rejected under a judicially created doctrine of obviousness type double patenting for being unpatentable over claim 1 of U.S. Patent 6,944,860. Applicant respectfully disagrees that each pending claim is obvious in view of claim 1 of the '860 patent. However, for the purpose of obviating this rejection, Applicant herewith submits a terminal disclaimer in accordance with 37 C.F.R. § 1.130(b). Upon acceptance of this terminal disclaimer, Applicant respectfully requests that the double patenting rejection be withdrawn.

***Rejections – Prior Art***

Claims 1-3, 6, 8-10, 13, 15-17, and 20 stand rejected under 35 U.S.C. § 102(e) for being anticipated by U.S. Patent 6,247,109 issued to Kleinsorge et al. (hereinafter, “Kleinsorge”). Applicant respectfully traverses because the prior art reference does not disclose each and every feature set forth in the claims.

Claim 1 sets forth, *inter alia*, “. . . the encapsulating comprising partitioning an operating system so that host-dependent and personalized elements of the active computing environment are moved into the compute capsule while shared resources and state necessary to manage them are excluded from the compute capsule. . .” (lines 4-8). The Office Action appears to suggest that this feature is described in Kleinsorge at col. 5, lines 4-15; col. 1, lines 24-31, and col. 4, lines 63-66 (Office Action, page 4, lines 8-11). Applicant respectfully disagrees.

Kleinsorge is directed to a resource management scheme that allows hardware resources to be dynamically partitioned so that each hardware partition executes an instance of an operating system (col. 4, lines 47-50). Each instance is a full implementation and is not described as being partitioned in any way. It is further noted that the system resources are not virtualized and no software layers are created between the running operating system and the physical hardware, nor is the state of the running operating systems swapped to provide access to the same hardware (col. 7, lines 9-15). There is no mention by Kleinsorge of partitioning an operating system in the manner claimed.

The following few paragraphs address portions of Kleinsorge identified in the Office Action as showing a partitioned operating system (Office Action, page 4, lines 10-11).

At col. 5, lines 4-15, Kleinsorge provides a summary of a procedure for migrating a processor from one partition to another. As described therein, A migrating processor stores its current state and loads a hardware state that it held during a previous execution within the second partition. The processor resumes operation in the second partition from where it left off previously. Applicant points out that, while Kleinsorge does describe storing and loading a processor state, it does not suggest partitioning an operating system so that host-dependant and personalized elements of the active computing environment are moved into a compute capsule while shared resources and a state necessary to manage them are excluded from the compute capsule, as set forth in claim 1.

At col. 1, lines 24-31, Kleinsorge identifies some advantages of its hardware resource partitioning scheme. There is no suggestion here of partitioning an operating system as set forth in claim 1.

At col. 7, lines 9-15, Kleinsorge specifies that its partitioning scheme does not virtualize the system resources. Instead, the partitioning scheme of Kleinsorge merely assigns specific resources to a specific instance of an operating system. There is no suggestion that the operating system is partitioned so that host-dependant and personalized elements of the active computing environment are moved into a compute capsule while shared resources and a state necessary to manage them are excluded from the compute capsule, as set forth in claim 1.

For the reasons mentioned above, Applicant respectfully submits that claim 1 should be allowed. Furthermore, claims 8 and 15 contains limitations similar to that mentioned above with respect to claim 1, and should therefore be allowed for the same reasons as claim 1. Furthermore, each of claims 2-6, 9-13, and 16-20 depends from claim 1, 8, or 15, and should therefore be allowed for at least the same reasons as those claims.

For the reasons stated above, Applicant respectfully submits that the present application is in condition for allowance. A Notice of Allowance is therefore respectfully requested.

If the Examiner has any questions concerning the present amendment, the Examiner is kindly requested to contact the undersigned at (408) 774-6933. If any other fees are due in connection with filing this amendment, the Commissioner is also authorized to charge Deposit Account No. 50-0805 (Order No. SUNMP586). A duplicate copy of the transmittal is enclosed for this purpose.

Respectfully submitted,  
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